

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN ASSEMBLY APRIL 2, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1395

Introduced by Committee on Insurance (Perea (Chair), Hagman (Vice Chair), Bonilla, Bradford, Ian Calderon, Cooley, Frazier, Mitchell, Olsen, Torres, and Wieckowski)

March 4, 2013

An act to amend ~~Section 1775.4~~ *Sections 1872.81 and 12975.9* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1395, as amended, Committee on Insurance. Insurance: ~~surplus line brokers~~. *special assessments: Seismic Safety Account.*

Existing law requires a special purpose assessment of \$0.25, commencing July 1, 2014, until January 1, 2016, and not exceeding \$0.25 thereafter, on each vehicle insured under an insurance policy issued in this state by the insurer. Existing law specifies that, upon appropriation by the Legislature, $\frac{2}{3}$ of the special purpose assessment be used for the purpose of funding the consumer service functions of the Department of Insurance related to regulating automobile insurers, as provided, and $\frac{1}{3}$ of the special purpose assessment be used for the purpose of improving consumer functions of the department, related to regulating automobile insurers, as specified. Existing law also authorizes, upon appropriation by the Legislature, to use up to \$0.05 of the \$0.25 special purpose assessment revenues collected to notify insurers and other members of the public about the existence of any low-cost automobile insurance program.

This bill would raise the amount of the special purpose assessment to \$0.26, until January 1, 2016, and not exceeding \$0.26 thereafter.

Existing law created the Seismic Safety Account as a special account within the Insurance Fund with the funds to be distributed, upon appropriation by the Legislature, to the Alfred E. Alquist Seismic Safety Commission for the support of the commission and to the department for the actual administrative costs incurred in collecting the assessments. In order to fund the account, an assessment, as specified, is imposed on each person who owns real property, commercial or residential, that is covered by a property insurance policy.

This bill would provide that the insurer is not required to refund any portion of an assessment because the policy or coverage is terminated prior to the expiration date of the policy or coverage.

~~Existing law requires every surplus line broker to pay annually to the Insurance Commissioner a tax of 3% of the gross premiums charged less return premiums upon business done by the surplus line broker under the authority of his or her license. If the annual tax for the preceding calendar year was \$5,000 or more, existing law requires the surplus line broker to make monthly installment payments on account of the annual tax on business done during the current calendar year. Existing law requires the amount of the payment to be 3% of the gross premiums charged less return premiums upon business done by the surplus line broker during the calendar month ending 2 calendar months immediately preceding the due date of the payment, as specified. Existing law requires a surplus line broker to file a return showing that his or her return premiums exceeded his or her gross premiums even when no payment is payable by the broker.~~

~~This bill would delete the provision requiring a surplus line broker to file a return showing that his or her return premiums exceeded his or her gross premiums even when no payment is payable by the broker. The bill would instead provide that if no payment is payable by the broker, the commissioner may waive or modify the requirements by issuance of a notice published on the department's Internet Web site.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1872.81 of the Insurance Code is amended
2 to read:

1 1872.81. In addition to the special purpose assessment imposed
2 pursuant to Section 1872.8, effective July 1, 2014, an insurer doing
3 business in this state shall, until January 1, 2016, pay to the
4 commissioner an annual special purpose assessment of ~~twenty-five~~
5 ~~cents (\$0.25)~~, *twenty-six cents (\$0.26)*, and thereafter pay to the
6 commissioner an annual special purpose assessment in an amount
7 not to exceed ~~twenty-five cents (\$0.25)~~, *twenty-six cents (\$0.26)*,
8 as determined by the commissioner, for each vehicle insured under
9 an insurance policy it issues in this state, for expenditure, upon
10 appropriation by the Legislature, as follows:

11 (a) Two-thirds of the special purpose assessment shall be used
12 for the purpose of funding the consumer service functions of the
13 department that are related to regulating automobile insurers,
14 including those functions performed by the rating and underwriting
15 service bureau, the claims service bureau, the investigations bureau,
16 or any successor bureaus of the department that may assume the
17 consumer service functions of these bureaus, and legal services in
18 support of these bureaus.

19 (b) One-third of the special purpose assessment shall be used
20 for the purpose of improving consumer functions identified in
21 subdivision (a) of the department that are related to regulating
22 automobile insurers, including, for improving the ability of the
23 department to respond to consumer complaints and information
24 requests through the department's toll-free telephone number, and
25 for improving the ability of the department to offer information
26 about automobile insurance rates to the public.

27 (c) Upon appropriation by the Legislature, the Department of
28 Insurance may use up to five cents (\$0.05) of the special purpose
29 assessment revenues collected pursuant to this section to notify
30 insurers and other members of the public about the existence of
31 any low-cost automobile insurance program established pursuant
32 to Section 11629.7 or other statutes that establish a program of the
33 type identified in Section 11629.7. In requesting an appropriation
34 for this purpose under its proposed plan developed pursuant to
35 Section 11629.85, the Department of Insurance shall explain, with
36 as much specificity as is reasonably possible, the objectives for
37 the use of the funds and the quantitative criteria by which the
38 Legislature may evaluate the effectiveness of the department's use
39 of the funds.

(d) The commissioner shall include, in the annual report submitted pursuant to Section 12922, all of the following information:

(1) The number of opened consumer complaints related to automobile insurance.

(2) The number of opened investigations related to automobile insurance.

(3) The number of investigations related to automobile insurance referred to prosecuting agencies.

(4) The number of administrative or regulatory cases related to automobile insurance referred to the department's legal division.

(5) The number of administrative or regulatory enforcement actions taken in cases related to automobile insurance.

(6) Total aggregate annual assessment revenue and expenditures pursuant to the assessment.

SEC. 2. Section 12975.9 of the Insurance Code is amended to read:

12975.9. (a) The Seismic Safety Account is hereby created as a special account within the Insurance Fund. Moneys in the account are available, upon appropriation by the Legislature, for the purposes of this section to fund the department and the Alfred E. Alquist Seismic Safety Commission.

(b) There is hereby imposed an assessment on each person who owns real property, commercial or residential, that is insured by a property insurance policy. The department shall calculate the annual assessment to be charged to each commercial and residential earned property exposure. The assessment shall be set annually every August 1, beginning August 1, 2014, for all commercial and residential earned property exposures reported during the previous calendar year. The annual assessment shall be set at fifteen cents (\$0.15) per earned property exposure for the first three years of the implementation of this section. Each year thereafter, the annual assessment shall be based upon the number of earned property exposures from both commercial and residential insurance policies, the amount required for the support of the Alfred E. Alquist Seismic Safety Commission, the actual collection and administrative costs of the department, and the maintenance of an adequate reserve, but shall not exceed fifteen cents (\$0.15) per earned property exposure.

(c) The insurer, upon receipt of an invoice from the department, shall transmit payment to the department for deposit into the Seismic Safety Account. The insurer shall recover the assessment from the insured, unless the insurer elects to pay the assessment on the insured's behalf. The insurer may provide a description of the assessment to the insured as part of its billing statement. *The insurer is not required to refund any portion of an assessment because the policy or coverage is terminated prior to the expiration date of the policy or coverage.* Any deficiency or excess in the amount collected in relation to the appropriation authority for the commission and the department shall be accounted for in the subsequent annual fee calculation. Any balance remaining in the Seismic Safety Account at the end of each fiscal year shall be retained in the account and carried forward to the next fiscal year.

(d) Funds in the Seismic Safety Account shall be distributed, upon appropriation by the Legislature, to the Alfred E. Alquist Seismic Safety Commission for the support of the commission and to the department for the actual administrative costs incurred in collecting the assessments.

(e) Any assessment collected from an insured that has not been remitted to the department shall be a debt owed to the state by the insurer. This part does not impose any obligation upon an insurer to take any legal action to enforce the collection of the assessment imposed by this section.

(f) Payment of the assessment shall be considered delinquent if not paid within 45 days of the invoice date. The department is authorized to charge a late fee of 1.5 percent per month of the balance due, compounded monthly, for any amount not paid within this period in accordance with Section 12995.

(g) (1) Notwithstanding Section 10231.5 of the Government Code, the department shall report by December 1 of each year, beginning on December 1, 2014, to the Legislature, the Alfred E. Alquist Seismic Safety Commission, and the Department of Finance on the assessment calculation methodology employed.

(2) A report to be submitted to the Legislature pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

~~SECTION 1.—Section 1775.4 of the Insurance Code is amended to read:~~

1 ~~1775.4. (a) The amount of the payment shall be 3 percent of~~
2 ~~the gross premiums charged less return premiums upon business~~
3 ~~done by the surplus line broker during the calendar month ending~~
4 ~~two calendar months immediately preceding the due date of the~~
5 ~~payment, as specified in Section 1775.3, excluding gross premiums~~
6 ~~and return premiums paid by him or her upon business governed~~
7 ~~by the provisions of Section 1760.5. If during any calendar month~~
8 ~~those return premiums upon business done by a surplus line broker~~
9 ~~exceed the gross premiums upon the business done by him or her~~
10 ~~in that calendar month, then no payment shall be payable by him~~
11 ~~or her in respect to that calendar month, and he or she may carry~~
12 ~~forward that excess to the next succeeding calendar month or~~
13 ~~months and apply it in reduction of the taxable premiums on~~
14 ~~business done by him or her in that succeeding calendar month or~~
15 ~~months. If no payment is payable by the broker, the commissioner~~
16 ~~may waive or modify the requirements by issuance of a notice~~
17 ~~published on the department's Internet Web site.~~

18 ~~(b) In determining the applicability of subdivision (a) of Section~~
19 ~~1775.1 to a surplus line broker who has acquired the business of~~
20 ~~another surplus line broker, the amount of tax liability of the~~
21 ~~acquired broker for the immediately preceding calendar year shall~~
22 ~~be added to the amount of the tax liability of the acquiring broker~~
23 ~~for the immediately preceding calendar year.~~

24 ~~(c) All amounts paid, other than penalties and interest, shall be~~
25 ~~allowed as a credit on the annual tax imposed by Section 1775.5.~~

26 ~~(d) If the total amount of monthly installment payments for any~~
27 ~~calendar year exceeds the amount of annual tax for that year, the~~
28 ~~excess shall be treated as an overpayment of annual tax and be~~
29 ~~allowed as a credit or refund.~~

30 ~~(e) A penalty of 10 percent of the amount of the monthly~~
31 ~~payment due shall be levied upon and paid by any surplus line~~
32 ~~broker who fails to make the necessary payment within the time~~
33 ~~required, plus interest at the rate of 1 percent per calendar month~~
34 ~~or fraction thereof from the due date of the payment until the date~~
35 ~~payment is received by the commissioner, but not for any period~~
36 ~~after the due date of the annual tax. The penalty and interest shall~~
37 ~~be applied as prescribed in Section 12636.5 of the Revenue and~~
38 ~~Taxation Code. The commissioner may remit the penalty in a case~~
39 ~~where he or she finds, as a result of examination or otherwise, that~~

1 the failure of, or delay in, payment arose out of excusable mistake
2 or excusable inadvertence.

3 (f) For any part of a payment required that was not made within
4 the time required by law, when the nonpayment or late payment
5 was due to fraud on the part of the taxpayer, a penalty of 25 percent
6 of the amount unpaid shall be added thereto, in addition to all other
7 penalties otherwise imposed.

8 (g) The commissioner, upon a showing of good cause, may
9 extend for not to exceed 10 days the time for making a monthly
10 payment. The extension may be granted at any time, provided that
11 a request therefor is filed with the commissioner within or prior
12 to the period for which the extension may be granted. Any surplus
13 line broker to whom an extension is granted shall, in addition to
14 the monthly payment, pay interest at the rate of 1 percent per
15 month, or fraction thereof, from the due date until the annual tax
16 due date.